

Remarks

Claims 1-5 and 8-10 are currently pending in this application, with claims 6 and 7 being canceled by this amendment. The recitations of claims 6 and 7 have been incorporated into amended claim 1, and the recitations of claim 7 have been incorporated into claim 10.

The Office Action rejected claims 1-5 and 7-9 under 35 U.S.C. § 102(b) as being anticipated by Johnson et al. (U.S. Patent No. 4,879,882); and rejected claims 6 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Johnson et al. Since claim 1 has been amended to include claims 6 and 7, and claim 10 has been amended to include claim 7, only a Section 103(a) rejection properly remains.

Applicant respectfully traverses the prior art rejections for the following reasons. Claims 1-5 and 8-10 recite a combination of elements, including an interchangeable entertainment object that promotes chewing in young children.

In contrast, Johnson et al. fails to disclose or suggest an interchangeable entertainment object that promotes chewing in young children, and the Office Action failed to provide a cite to such a disclosure in the reference. In fact, the Office Action failed to specifically address claim 7 (now incorporated into claims 1 and 10). Rather, Johnson et al. merely disclose a pendant having decorative elements that are interchangeable by the wearer. The reference fails to disclose or suggest that the decorative elements promote chewing in a child. Nor can Johnson et al. possibly disclose this because the decorative elements shown in the Figures of Johnson et al. pose a dangerous choking hazard for young children, and are thus inappropriate for young children to chew on. The Johnson et al. reference is directed to providing personalized jewelry for fashion purposes, and neither contemplates nor suggests that the decorative elements are to be used to promote chewing in young children.

Because Johnson et al. teach decorative elements that are choking hazards, the reference specifically “teaches away” from the claimed invention recited in claims 1-5 and 8-10. Since Johnson et al. teach away from the present invention, it cannot create a prima facie case of obviousness. *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1354 (Fed. Cir. 2001) (“references that teach away cannot serve to create a prima facie case of obviousness”). Thus, claims 1-5 and 8-10 are allowable over Johnson et al. for this additional reason.

In light of the above, Applicant respectfully submits that the prior art of record, whether taken alone or in any reasonable combination, fail to disclose or suggest the invention recited in claims 1-5 and 8-10. Applicant, therefore, requests reconsideration and withdrawal of the prior art rejections of these claims.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered, placing claims 1-6 and 8-10 in condition for allowance. Applicant submits that the proposed amendments of claims 1 and 10 do not raise new issues or necessitate the undertaking of any additional search of the art, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action.

Furthermore, Applicant respectfully points out that the final action presented some new arguments as to the application of the art against Applicant’s invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of the amendment would place the application in better form for appeal, should the patentability of the pending claims still be disputed.

• Application No. 10/772,056
Amendment After Final dated March 7, 2005
Reply to Office Action of December 6, 2004

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 03-2775. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

Dated: March 7, 2005

By: 

James M. Olsen
Reg. No. 40,408

Telephone: (302) 888-6256
Facsimile: (302) 255-4256



VIA FIRST CLASS MAIL ON MARCH 7, 2005

Serial/Intf. No.: 10/772,056 Docket No.: 11845*1 Atty: JMO

Names: Wendy Michele KIRSH

Title: NECKLACE WITH INTERCHANGEABLE , , ,

The following, due March 7, 2005 in the U.S. Patent Office, has been received there on the date stamped hereon.

- | | |
|--|--|
| <input type="checkbox"/> Declaration or <input type="checkbox"/> Oath | <input type="checkbox"/> Check(s) _____ |
| <input type="checkbox"/> Power of Attorney | <input checked="" type="checkbox"/> Amendment or Response |
| <input type="checkbox"/> Specification <input type="checkbox"/> Claims | <input type="checkbox"/> Declaration or Affidavit |
| <input type="checkbox"/> Preliminary Amendment | <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Brief |
| <input type="checkbox"/> Assignment/Cover Sheet | <input type="checkbox"/> CPA/DIV/CIP |
| <input type="checkbox"/> Drawing(s) _____ sheet(s) | <input type="checkbox"/> Extension of Time |
| <input type="checkbox"/> Priority Document(s) | <input type="checkbox"/> Issue Fee Transmittal |
| <input type="checkbox"/> Disclosure Statement (Rule 56/97) | <input type="checkbox"/> Prelim. Statement <input type="checkbox"/> Motion |
| <input type="checkbox"/> PTO 1449 w/reference(s) | <input type="checkbox"/> Letter |
| <input type="checkbox"/> PTO 1533 Submission of Missing Parts | <input type="checkbox"/> _____ |

CB307 1/98 OD